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defendant under process as a witness". For a discussion of cases involving the guaranty against unlawful searches and seizures, see 15 MICH. L. REV. 65. The cases involving only the limitation against self-incrimination are numerous. Several involve the situation in which the defendant was forced by one not acting under judicial process to remove his shoes for the purpose of comparison with tracks, and the evidence thereby gained was held admissible. *People v. Van Wormer*, 175 N. Y. 188; *State v. Fuller*, *supra*; *State v. Arthur*, 129 Ia. 235 (But the court assumed that the accused, in jail, voluntarily gave up his shoes to the sheriff); *Krens v. State*, 75 Neb. 294; *Magee v. State*, 92 Miss. 865 (in which the accused was compelled to put his foot in a track for the purpose of identification). *Contra*: *Day v. State*, 63 Ga. 667; *Evans v. State*, 106 Ga. 519. And if the accused takes off his shoes for inspection or does some similar act or gives testimony against himself without compulsion or threats, the evidence is doubtless admissible, since he is then deemed to have waived the benefit of the limitation. *Moss v. State* (Ala.), 40 So. 340; *State v. Taylor*, 202 Mo. 1; *State v. Fuller*, *supra*. There is also some authority for the view that if the defendant is compelled by legal process to remove his shoes for the purpose of comparison, the evidence is admissible. *State v. Graham*, 74 N. C. 646; *Walker v. State*, 7 Tex. App. 245. The reason governing the prevailing view that testimony secured by such means as in the instant case is not rendered inadmissible by the provision against self-incrimination is that such testimony is the testimony of the physical facts and not that of the accused himself. *State v. Thompson*, 161 N. C. 238; *Holt v. United States*, 218 U. S. 245.

DIVORCE—EFFECT—TENANCY BY ENTIRETIES.—Complainant filed a bill for partition of real estate which had been held by himself and wife as tenants by the entireties. The defendant, the divorced wife of the complainant, contended that such a tenancy cannot be partitioned. *Held*, that a decree of divorce severs the interest of such tenants and they become tenants in common or joint tenants, according to the statutes of the state in which the land is located. *Sbarbaro v. Sbarbaro*, (N. J., 1917), 102 Atl. 256.

Only two authorities are cited against the rule thus promulgated namely, *In re Lewis*, 85 Mich. 340, and *Alles v. Lyon*, 216 Pa. St. 604, and of these the effect of the decision in Michigan has been nullified by Sec. II, 437 MICH. COMP. LAWS, 1915, providing that divorce changes a tenancy by entireties to one in common unless otherwise provided in the decree. The Pennsylvania decision still stands, unaffected by legislation, and expressly followed, as late as 1912, in *Hilt v. Hilt*, 50 Pa. Super. Ct. 455. The result in the principal case is attained on the theory that entirety holdings rest on the fiction of unity of person, and when this is destroyed, its incidents must of necessity fail. Additional support is adduced—*e converso*—from a statement in Coke, Litt. 187b: "If an estate be made to a man and woman and their heirs, before marriage, and after they marry, the husband and wife have moieties between them." With the exceptions noted, the instant decision is in harmony with that of courts in other jurisdictions where the same question has arisen. Though a wife pay out of her personal estate for land conveyed to

herself and spouse, a divorce merely renders them tenants in common and she has no equitable claim to the whole, *Reed v. Reed*, 109 Md. 690. Community property, including a homestead, was divided by divorce in *Speer v. Sykes*, 102 Tex. 451. If in the decree the legal interest is not provided for, the divorcees take as tenants in common, *cf. Joerger v. Joerger*, 193 Mo. 133. It is discretionary in the trial court to award all the property to the husband, subject to alimony, *Broгна v. Broгна*, 67 Wash. 687. The tendency would appear to be general to do away, in the given circumstances, not only with seisin *per tout* but also with the incident of survivorship; although, in those states where a joint tenancy has not yet fallen into disfavor, the severance may not destroy survivorship, *Ames v. Norman*, 36 Tenn. (4 Sneed) 683.

EVIDENCE—DYING DECLARATIONS—OPINION RULE.—In the trial on indictment for manslaughter, deceased's wife was permitted to testify for the state that deceased said, the day after the shooting, "I won't be with you much longer. I have got to leave you. Oh, Lord, what a pity for Frank McNeil to shoot a poor boy like I am for nothing! I never done anything to Frank." *Held*, error. *McNeal v. State*, (Miss., 1917), 76 So. 625.

An examination of the numerous decisions on dying declarations in criminal cases shows that the application of the Opinion Rule by the courts has resulted in great confusion and conflict. See note, 56 L. R. A. 365; note 21 L. R. A. (N. S.) 840. The Opinion Rule has been declared by Wigmore to have no application to dying declarations "because the Opinion Rule is based on the theory that wherever the witness can state specifically the detailed facts observed by him, the inferences to be drawn from them can equally well be drawn by the jury. But since declarant is here deceased, it is no longer possible to obtain from him by questions any more detailed data than his statement may contain, and hence his inferences are not in this instance superfluous but are indispensable. Nevertheless the courts seem to accept the Opinion Rule as applicable. 2 WIGMORE ON EVIDENCE, 1447, and note; and see note 56 L. R. A. 375. This illogical application of the Opinion Rule has been overcome in some jurisdictions by the application of the fiction that the statement sought to be admitted in evidence is not opinion, but a "collective fact". *State v. Fielding*, 135 Ia. 255; *Smith v. State*, 133 Ala. 73. On this theory, while not repudiating the Opinion Rule in name, the Supreme Court of Mississippi, previous to this case, showed a tendency to follow the doctrine stated in WIGMORE, (*supra*). The declarations in *Payne v. State*, 61 Miss. 161, that "he shot me without any cause whatever;" in *Powers v. State*, 74 Miss. 777, "you have killed me without cause;" in *Jackson v. State*, 94 Miss. 8', that the accused killed him for nothing; in *House v. State*, 94 Miss. 107, 21 L. R. A. (N. S.) 840, that H. had killed him, and killed him without cause, were all admitted. In the last case the court relied on the section of WIGMORE, and note cited, *supra*. Despite the statement of the court in the principal case that it is not overruling the above cases, it is difficult to see how a distinction can be based on anything but a barren quibble over terms. It is a return to the Opinion Rule *in toto*.